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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/789,612

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Anthony L. Billups

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SIOUX FALLS, SD 57117

EXAMINER

GRAHAM, GARY K

ART UNIT

PAPER NUMBER

3727

MAIL DATE

DELIVERY MODE

07/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/789,612

Applicant(s)

BILLUPS, ANTHONY L.

Examiner

Gary K. Graham

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5 and 7-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5 and 7-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There appears no original disclosure of a removable section of the extension portion having a length that is approximately 40 percent of a length of the gripping portion of the handle member. The written description appears silent as to a particular length or percent length of the gripping portion for a removable section of the extension portion. Additionally, such cannot be readily determined from applicant's drawing. Assuming the entire extension portion cannot be removed from the head (otherwise it wouldn't be connected), there is no way to determine from the drawings what portion of the extension portion can be removed from the channel to extend the effective length of the handle member. Further, there is no discussion of, and it is not shown, how far the extension portion extends into the head member. Therefore, it cannot be readily determined what is the initial particular dimensional relationship between the gripping portion and the extension portion.

Art Unit: 3727

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, line 7, there is no antecedent basis for "said handle member". Note that it appears in line 4 "head" should be ---handle---. Such appears to have been inadvertently changed in the last amendment.

In claim 11, lines 4-5 appear improper. It does not appear the opening of the channel extends longitudinally along the exterior of the head member. The opening appears only at one end of the head. It appears lines 4-5 should read ---wherein the channel extends longitudinally along said head member---. In line 7, use of ---lateral free edges--- instead of "free edges" would clarify the distinction between the groups of edges.

In claim 13, lines 10-11 appear improper. It does not appear the opening of the channel extends longitudinally along the exterior of the head member. The opening appears only at one end of the head. It appears lines 10-11 should read ---formed in and extending longitudinally along said head member, the channel having an opening in communication with an exterior of said head---. In line 15, use of ---lateral free edges--- instead of "free edges" would clarify the distinction between the groups of edges.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 8, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishiyama et al (US patent 4,392,269).

The patent to Nishiyama discloses the invention as is claimed (see figs. 1, 8-12). Nishiyama discloses an apparatus comprising a handle member (203) with a gripping portion at one end (as 6a in fig.1) and an extension portion at the other. The extension portion extends (fig.8) into a channel defined by portions (213,215) in boss (208) of head member (205). Note figures 11, 12 wherein it can be seen that some adjustability in the length of the extension member into the channel is allowable. The head member (see fig.10) includes a pair of spaced longitudinal channels (221) formed by folded back portion (220). A scrubbing member (fig.9) is selectively mounted to the head member by insertion of a pair of mounting members thereon, in the form of spaced longitudinal flanges (225), into the channels. The scrubbing member has a main portion (224) from which a plurality of bristles (226) extend outwardly. The scrubbing member is “adapted” to scrub or contact any surface so desired, including skin of a user. A locking member (204) is operationally coupled to the head and around the extension portion for inhibiting movement of the extension portion with respect to the head member when actuated by a user. The locking member is threadably (212,216) coupled with the head member such that rotation of the locking member acts to reduce the diameter of the channel to frictionally engage the extension of the handle. Thus, by adjusting the depth the

extension is inserted into the channel, some adjustment of the length of the handle member is enabled.

With respect to claim 1, terming the apparatus a “body scrubbing apparatus” does not distinguish from Nishiyama as such can be used in any manner so desired. Such at most relates to the intended use of the device and does not define any particular structure, at least none not disclosed by Nishiyama.

With respect to claim 12, Nishiyama is considered to meet the claim, as far as understood. Note figure 1, wherein it is shown that a length of the removable portion received into the boss is approximately 40 percent of the gripping portion (6a) shown at the opposite end of the handle (6). It is presumed that the majority of such removable portion can be removed from the boss in like manner to applicant’s interpretation of his own drawings.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishiyama et al (US patent 4,392,269) in view of Ancil (US patent 5,791,006).

The patent to Nishiyama discloses all of the above recited subject matter with the exception of the gripping portion having an arcuate portion and straight portion.

The patent to Anctil discloses a cleaning device wherein the handle includes a gripping portion (16) that has an arcuate portion (22).

It would have been obvious to one of skill in the art to curve the gripping portion of the handle of Nishiyama, as clearly suggested by Anctil, to provide a more comfortable handle. Use of arcuate gripping portions is well known.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishiyama et al (US patent 4,392,269) in view of Young et al (US patent 5,083,840).

The patent to Nishiyama discloses all of the above recited subject matter with the exception of the mounting members comprising base portions with angled securing portions thereon to engage vertical and angled portions of the channels in the head.

The patent to Young discloses a brush arrangement (figs. 14-16) wherein attachment of a head scrubbing member (155) to a support (150) is achieved by securing mounting members (157) in mounting channels (151). The mounting members each comprise a base portion and a securing portion wherein the base portion is coupled to the scrubbing member and the securing portion is coupled to the base portion. The channel members each comprise a vertical portion for receiving the base portion and an angled portion for receiving the securing portion.

It would have been obvious to one of skill in the art to employ a different securement of the scrubbing member to the support or head of Nishiyama, such as clearly suggested by Young, as a mere art recognized alternative securement, lacking criticality to the particular type of securement, and as a way to maximize the scrubbing member dimensions. Both Nishiyama and Young disclose means to secure scrubbing members to supports. The particular manner appears to relate more to the choice of the manufacturer than on any inventive concept. Further, provision of the mounting members on the back of the scrubbing member instead of the side edges would allow for expanding the brush scrubbing field without enlargement of the head member.

Allowable Subject Matter

Claim 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 9 and 13 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

Applicant's arguments filed 16 April 2009 have been fully considered but they are not persuasive.

Applicant argues that one of skill in the art would not be led to understand that Nishiyama discloses the claimed relationship. Such is not persuasive. One of skill in the art looking at figures 11-12 of Nishiyama can clearly see that the extension portion of the handle (203) that extends into the boss (208) is selectively “positionable” within the head. Nothing would prohibit such, particularly in view of the frictional lock employed by Nishiyama that can be locked at any insertion depth of the extension portion of the handle. What prevents partial insertion and locking? Note that the claim only requires that such selective positioning is possible. Even though Nishiyama may not discuss or show that insertion depth may or should be varied, it clearly is possible in view of the mechanism employed. As such, Nishiyama meets the claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/
Primary Examiner, Art Unit 3727